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Supreme Court, U.S.
FILED

No. 03-1544 11 2004

IN THE SUPREME COURT OF THE UNITED STATES

ALEXANDER BLAIR SIBLEY, a minor,
by and through
MONTGOMERY BLAIR SIBLEY, his Father,

Petitioner,

vs.

MAXINE COHEN LANDO, in her capacity
as a Judge of the Circuit Court of the 11th Judicial Circuit
in and for Miami- Dade County, Florida,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

Appendix to Petition for Writ of Certiorari

Montgomery Blair Sibley
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UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA

Case. No.03-21885-CV-PCH

ALEXANDER BLAIR SIBLEY, a minor,
by and through MONTGOMERY BLAIR SIBLEY,
his Father,

Plaintiff,

vs.

MAXINE COHEN LANDO, in her capacity
as a Judge of the Circuit Court of the 11th
Judicial Circuit in And For Miami- Dade
County, Florida,

Defendant.
_____/

COMPLAINT FOR DECLARATORY RELIEF

Introduction

1. By this lawsuit, Plaintiff seeks a declaratory judgment that his rights secured by the Fifth Amendment Due Process Clause, the Fourteenth Amendment Equal Protection Clause, Article I, § 2, of the Florida Constitution and Florida law as enunciated by the Florida Supreme Court in *St. Mary's Hospital, Inc. v. Phillipe*, 769 So. 2d 961, 971 (Fla. 2000) and *Palm Harbor Special Fire Control Dist. v. Kelly*, 516 So. 2d 249, 251 (Fla.2000) were violated by:

a. the Defendant's orders on child support of July

13, 2001and August 5, 2002 in t' e Eleventh Judicial Circuit in and for Miami-Dade County, Florida, Case No.: 94-18177 FC 19;

b. the Defendant's application of Florida Statute §61.30(12) and Florida case law interpreting that statute in her orders of July 13, 2001and August 5, 2002 in Eleventh Judicial Circuit in and for Miami-Dade County, Florida, Case No.: 94-18177 FC 19; and

c the Defendant's position that Florida law permits children born of a second marriage to be treated differently than children born of a first marriage in determining child support payments.

Jurisdiction And Venue

2. Jurisdiction of this Court is invoked pursuant to the provisions of 28 U.S.C. §1331, §1343(3) and (4), §2201 and §2202 and 42 U.S.C. §1983.

3. Venue in this district is proper under 28 U.S.C. §1391(a)(1) and (2).

Parties

4. Plaintiff, Alexander Blair Sibley is a resident of the State of Maryland, a minor and the fourth child of Montgomery Blair Sibley ("Father").

5. Defendant, Maxine Cohen Lando, is a resident of Miami-Dade County, Florida and is sued at present only in her capacity as a Judge of the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida.

General Allegations

6. In the summer of 1994, a petition for dissolution of marriage was filed in Florida circuit court by Barbara Sibley against Father. A final judgment of dissolution was granted on September 20, 1994, between Father and Barbara Sibley in the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, Case No.: 94-18177 FC 19.

7. Of that marriage, three children were born: Margaret Sibley, Elizabeth Sibley and Montgomery Sibley, Jr.

8. On July 16, 1994, Father's mother, Beatrice Blair, died. Pursuant to her last will and testament, three pour-overs trust were created for three of her grandchildren, Margaret Sibley, Elizabeth Sibley and Montgomery Sibley, Jr. ("the Children's Trusts"). Father was appointed Trustee of the Children's Trusts pursuant to a Letter of Trusteeship issued by the a Surrogate Judge of the County of New York on August 24, 1995.

9. On December 30, 1997, Plaintiff was born of the marriage of Father and his wife, Svetlana Sibley.

10. On January 29, 2001, the Defendant entered an order appointing Dirk Lorenzen as attorney *ad litem* for the first three children of Father. On May 4, 2001, Lorenzen filed "Children's Motion to Compel Immediate Payment of Child Support and Education Expenses *Pendente Lite*", representing to this Court that he was the "Attorney for the Children".

11. On July 4, 2001, Lorenzen noticed this motion for July 13, 2001, before the Defendant. At the hearing on July 13, 2001, the Defendant heard and ruled upon the "Children's Motion to Compel Immediate Payment of Child Support and Education Expenses *Pendente Lite*". On that day, the

Defendant issued an order. Subsequently, the Defendant entered an order of July 24, 2001, granting the May 4, 2001, motion as to the Margaret Harper Sibley. Both orders required Father to pay $15,600.00 in educational expenses of his first born child without reference to Father's other children.

12. This amount represented close to half of Father's yearly income at the time.

13. Significantly, at the hearing held July 13, 2001, the Defendant stated her understanding of her constitutional obligation to children born of a second marriage when she stated:

> I find that his argument that he now has a fourth child so he can't pay his daughter's tuition to be something that the Court is rejecting. Seven years ago he signed an agreement, he seems to be somebody who understands what agreements are about, and I do still consider, well, God bless all persons coming to this world, the conception of a child to be a volunteer act and a knowing act in somebody of Mr. Sibley's intelligence. So I assume somebody of intelligence such as Mr. Sibley wouldn't have another child unless he could afford to, and unless he did so understanding completely his responsibilities to his other children, who he says he love just as much as this new one. so I have to reject that argument as being illogical in light of the court's knowledge of the parties, their education and their station in life. . . . For all of those reasons the Court certainly will compel that Mr. Sibley comply and pay this

tuition.

14. Father on August 7, 2001, appealed to the Florida Third District Court of Appeals Defendant's orders of July 13 and 24, 2001, specifically raising the issue of the equal protection violation of Plaintiff's rights as articulated by the dissent in *Pohlmann v. Pohlmann*, 703 So. 2d 1121 (5th DCA 1997). That appeal was assigned Case Number 3D01-2173. Some 232 days later, on March 27, 2002, the Florida Third District Court of Appeals affirmed the trial court in Case Number 3D01-2173 with a brief slip opinion which affirmed *per curiam* without opinion and which ignored completely the substance of Father's equal protection arguments. Father's motion for reconsideration, rehearing and clarification in Case Number 3D01-2173 was subsequently denied *per curiam* without opinion on May 29, 2002.

15. On August 4, 2001, Father filed his Supplemental Petition for Modification of Child Support in Eleventh Judicial Circuit in and for Miami-Dade County, Florida, Case No.: 94-18177 FC 19. That supplemental petition sought relief from the terms of the Marital Settlement Agreement between the Father and Barbara Sibley that (i) Father pay $4000/month in support for his first three children and (ii) Plaintiff's Father pay all the educational expenses of his first three children. The basis for the Supplemental Petition was that due to Father's inability to secure employment as an attorney and the birth of Plaintiff by a subsequent marriage, there had been a sufficient, material, involuntary and permanent in nature change in his financial circumstances warranting a modification.

16. In January, 2002, Barbara Sibley filed two motions for contempt against Father relating to enforcement of the Marital Settlement Agreement between them for child support. The

first sought payment of $4,000/month in child support from July 2000 until the present pursuant to the terms of the Martial Settlement Agreement between them. The second motion for contempt sought enforcement of the terms of the Marital Settlement Agreement between them which required that Father to pay 100% of his first three children's educational expenses.

17. On June 4, 5, 6, 7 and July 1, 2002, the Defendant held a trial on these motions related to child support and modification of Plaintiff's Father's obligations under the Marital Settlement Agreement.

18. On August 5, 2002, the Defendant signed orders granting Barbara Sibley's motions for contempt. As to the order on child support, the Defendant adopted Barbara Sibley's counsel's findings *verbatim* and ordered Father (i) to pay $100,000 for past due child support and (ii) remain current on his child support of $4,000 per month thereafter. Next, the Defendant found that the Father "at all times from May 2000 had the present financial ability to pay but willfully or intentionally failed and refused to do so and wilfully violated the Order of this Court." The Court then sentenced Father to Ninety (90) days in the Dade County Jail beginning January 1, 2003, unless he paid the specified amounts by December 1, 2002. In the child support order, the Defendant adopted Barbara Sibley's counsel's findings *verbatim* and based her conclusion of Father's "ability to pay" upon "her" findings that: Father's 1994 financial affidavit showed a net income of $3,460/month; his 1998 financial affidavit showed a net income of -$1,435 and a net negative net worth of -$57,400; his 1999 financial affidavit showed a net income of $2,918/month and a negative net worth of -$121,900; his present gross income was $37,500 annually from his employment and his Plaintiff's mother's income was in excess

of $30,000/year.

19. As to the order on the children's educational expenses, the Defendant again adopted *verbatim* Barbara Sibley's counsel's findings and (i) sentenced Father to be incarcerated for Ninety (90) days in the Dade County Jail beginning November 1, 2002, (ii) provided that Father may purge the incarceration order by paying $174,866.31 within sixty (60) days of the date of the order and (iii) allowing Father to make a motion to the Defendant to have the Children's Trusts pay for the past, present and future educational expenses of the children in order to discharge Father's obligations.

20. On August 27, 2002, Father filed his notice of appeal of the above orders of August 5, 2002. That appeal has been assigned Case No.:3D02-2308 the Florida Third Circuit Court of Appeals.

21. In case No.:3D02-2308, the Florida Third Circuit Court of Appeals has refused to Father the ability to file a brief which allows him to competently raise the equal protection arguments herein by refusing to him an additional 25 pages for the initial brief on appeal.

22. The so-called "*Younger*" doctrine is not applicable to this matter. In *Middlesex County Ethics Comm. v. Garden State Bar Assoc.*, 102 S. Ct. 2515, 2522-23 (1982), the Supreme Court set out three benchmarks to guide the application of *Younger* abstention: "first, do state bar disciplinary hearings within the constitutionally prescribed jurisdiction of the State Supreme Court constitute an ongoing state judicial proceeding; second, do the proceedings implicate important state interests; and third, is there an adequate opportunity in the state proceedings to raise constitutional challenges." Id. at 2521 (emphasis in original). Here, neither the first or third

benchmarks are present and as such *Younger* abstention is not warranted. First, there are no on-going state proceedings involving this Plaintiff as he is not a party to any court proceeding in Florida, nor could he be under the Florida rules of procedure. Second, the constitutional challenge to the support orders has been raised previously by Father and the Third District Court of Appeals ignored it and now practically precludes him from raising this issue competently by limited the size of his brief on appeal in that matter. Most importantly, the statutory scheme of Florida Statute §61.30(12) expressly prevents Defendant from considering Plaintiff when determining Father's obligation to pay child support and indeed, every Florida court to address the issue has concurred that Florida Statute §61.30(12) is constitutional. *See*: *Robinson v. Robinson*, 657 So.2d 958, 20 Fla. L. Weekly D1675,, (Fla.App. 1 Dist. 1995); *Pohlmann v. Pohlmann*, 703 So. 2d 1121 (5th DCA 1997); *State, Dept. of Revenue on Behalf of Powell v. Feeney*, 689 So.2d 350, 22 Fla. L. Weekly D453,, (Fla.App. 2 Dist. 1997); *Miller-Bent v. Miller-Bent*, 680 So.2d 1119, 21 Fla. L. Weekly D2252,, (Fla.App. 1 Dist. 1996); *Hice v. Pace*, 675 So.2d 952, 21 Fla. L. Weekly D866,, (Fla.App. 1 Dist. 1996). As such, Plaintiff has no opportunity to raise this issue in the state court so the *Younger* doctrine is inapplicable here.

First Claim for Relief

23. Plaintiff re-alleges paragraphs 1 through 22 and incorporates them herein by reference.

24. Defendant violated Plaintiff's rights by issuing the above-referenced orders regarding child support in violation of the Fifth Amendment Due Process Clause, the Fourteenth Amendment Equal Protection Clause and Article I, § 2, of the Florida Constitution without considering Plaintiff's rights to

support from Father and ordering that Father pay over 100% of his annual income to support the first three children of Father thereby leaving nothing from Father for Plaintiff's support.

25. Plaintiff has been damaged thereby as the ability to support to which he is entitled from his Father has been eliminated.

WHEREFORE, Plaintiff requests that this Court:

A. Assume jurisdiction of this action;

B. Declare that the Defendant has violated Plaintiff's rights under the Fifth Amendment Due Process Clause, the Fourteenth Amendment Equal Protection Clause and Article I, § 2, of the Florida Constitution by the actions described above;

C. Retain jurisdiction of this matter to enforce this declaratory degree if subsequently violated;

D. Awarding reasonable costs, disbursements and attorney fees pursuant to 42 U.S.C. §2088; and

E. Enter such other and further relief as the Court deems just and proper.

Second Claim for Relief

26. Plaintiff re-alleges paragraphs 1 through 22 and incorporates them herein by reference.

27. Florida Statute §61.30(12) violates Plaintiff's rights as secured by the Fifth Amendment Due Process Clause, the Fourteenth Amendment Equal Protection Clause and Article I, § 2, of the Florida Constitution.

28. Plaintiff has been damaged thereby as the ability to

support to which he is entitled from his Father has been seriously hampered by the application of this statute to his Father's child support obligation to his first three children.

WHEREFORE, Plaintiff requests that this Court:

A. Assume jurisdiction of this action;

B. Declare that the Defendant has violated Plaintiff's rights under the Fifth Amendment Due Process Clause, the Fourteenth Amendment Equal Protection Clause and Article I, § 2, of the Florida Constitution by the application of Florida Statute §61.30(12);

C. Retain jurisdiction of this matter to enforce this declaratory degree if subsequently violated;

D. Awarding reasonable costs, disbursements and attorney fees pursuant to 42 U.S.C. §2088; and

E. Enter such other and further relief as the Court deems just and proper.

Third Claim for Relief

29. Plaintiff re-alleges paragraphs 1 through 22 and incorporates them herein by reference.

30. Defendant's statements made at the hearing held on July 13, 200, violated Plaintiff's rights as secured by the Fifth Amendment Due Process Clause, the Fourteenth Amendment Equal Protection Clause, Article I, § 2, of the Florida Constitution and the law as enunciated by the Florida Supreme Court in *St. Mary's Hospital, Inc. v. Phillipe*, 769 So. 2d 961, 971 (Fla. 2000) and *Palm Harbor Special Fire Control Dist. v. Kelly*, 516 So. 2d 249, 251 (Fla.1987) and the Supreme Court, *Loving v. Virginia*, 388 U.S. 1, 87 S.Ct. 1817, 18 L.Ed.2d 1010; *Skinner v. Oklahoma*, 316 U.S. 535, 62 S.Ct. 1110, 86 L.Ed. 1655; *Pierce v. Society of Sisters*, 268 U.S. 510, 45 S.Ct.

571, 69 L.Ed. 1070, *Griswold v. Connecticut* 381 U.S. 479, 484, 85 S.Ct. 1678, 1681, 14 L.Ed.2d 510 (1965), by treating Plaintiff differently than others similarly children with no rational basis for the difference in treatment when she ordered a level of support for children of Father's first marriage in gross disproportionality to the support she left for Plaintiff from Father's income.

31. Plaintiff has been damaged thereby as the ability to support to which he is entitled from his Father has been seriously hampered by the application of this statute to his Father's child support obligation to his first three children.

WHEREFORE, Plaintiff requests that this Court:

A. Assume jurisdiction of this action;

B. Declare that the Defendant has violated Plaintiff's rights under the Fifth Amendment Due Process Clause, the Fourteenth Amendment Equal Protection Clause and Article I, § 2, of the Florida Constitution;

C. Retain jurisdiction of this matter to enforce this declaratory degree if subsequently violated;

D. Awarding reasonable costs, disbursements and attorney fees pursuant to 42 U.S.C. §2088; and

E. Enter such other and further relief as the Court deems just and proper.

MONTGOMERY BLAIR SIBLEY
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By:_____
Montgomery Blair Sibley
Fla. Bar No.: 725730

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 03-21885

ALEXANDER BLAIR SIBLEY,

Plaintiff

vs.

MAXINE COHEN LANDO,

Defendant

HEARING HELD 8-27-03
BEFORE THE HONORABLE PAUL HUCK

APPEARANCES:

FOR THE PLAINTIFF:
MONTGOMERY BLAIR SIBLEY,
Counselor at Law

FOR THE DEFENDANT:
STEPHANIE STAPLES CURD,
Assistant Attorney General

THE COURT: Be seated everyone. We're here in the matter of Sibley versus Lando. Case No. 03-21885. May I have your appearances, please.

MR. BLAIR SIBLEY: Good afternoon. Montgomery Blair Sibley on behalf of the plaintiff Alexander Sibley.

MS. STAPLES CURD: Stephanie Staples Curd from the Attorney General's Office on behalf of Judge Lando.

THE COURT: We're here on two matters. We're here on the defendant Lando's motion to dismiss and also a motion to restrict further filing by the plaintiff in this case.

Let me do this, let me ask Mr. Sibley, with regard to the motion to dismiss how is this case different from the prior case I had? This is the third case I have had. I know this case. You are appearing as the father, next of friend of Alexander Blair Sibley. It appears you are essentially asking this Court to act as a super Appellate Court with regard to any orders entered in the ongoing domestic relations matter before the State Court Judge.

MR. BLAIR SIBLEY: If that were so Your Honor then the Rooker Feldman doctrine would compel you to dismiss this case as well. I believe there is a distinction in this case. There is a general attack of the constitutionality of Florida Statute 6130, subdivision 12 that sets up a dual standard of support for children of -- in these states from children of a first marriage and children of a second marriage. This case is distinct from the preceding cases that dealt with specific orders. And not to admit but not to argue the super appellate conclusions this Court made in determining the absence of jurisdiction under Rooker Feldman, that is not the case here. This case is on four squares with Feldman itself where the Supreme Court recognized that an attack on the factual findings of a Judicial Court were not a proper basis for jurisdiction in a U.S. District Court.

However the attack by Feldman on the general constitutionality of the District of Colombia's Bar admission proceedings was appropriate jurisdiction for the District Court

and the matter was remanded for that very purpose. That is the same posture this case sits before Your Honor today. Florida has a statute -- Florida discriminates between children depending upon their order of birth and their parentage which is not permissible. So this case is different because they're different in the nature of the allegations.

THE COURT: Would you like to respond to that limited argument?

MS. STAPLES CURD: The claim he's making reference to is the second claim for relief on page 8 and 9 of the complaint. He has not pled a Constitutional attack in the second claim for relief. It's not within the four corners of the relief. He makes that argument in –

THE COURT: That's what I am trying to find out. I thought you could help if he did identify that. He does refer to Florida Statue 61.3012.

MS. STAPLES CURD: He's asking they declare what the defendant did violated the plaintiff's rights. He doesn't ask the Court to declare it unconstitutional. So this is not a general attack on the constitutionality of the statute, at least as it's pled.

THE COURT: I don't think it is either.

MS. STAPLES CURD: He has not complied with the Florida Statute that requires notice to the Attorney General and various other things that need to be filed that would allow the Attorney General to intervene as the Attorney General and to defend the constitutionality of this statute.

THE COURT: That's the first I have heard of this argument. I

did not view this complaint as a general attack on the -- on section 61.3012. Appears when you look at the overall allegations of the complaint this is really an attack on Judge Lando's orders.

MS. STAPLES CURD: That's the way I read it too, Your Honor.

MR. BLAIR SIBLEY: May I respond.

THE COURT: Yes, sir.

MR. BLAIR SIBLEY: To the extent the Court is leaning that way I would ask under the liberal pleading rules that I have leave to be more specific in that this is a general attack on this particular statute and its Constitutionality.

THE COURT: I am not inclined to do that. I cannot ignore your history in this Court and in the State Courts. Frankly, while I do not think it's appropriate to enter an order restricting your ability to file lawsuits I think it's within my discretion to allow you to amend the complaint, and I'm going to deny that. I think these -- by the way this is the first lawsuit brought by Alexander Blair Sibley. So the mere fact that Montgomery Blair Sibley has filed these lawsuits does not necessarily mean it needs to be visited on Alexander. Plus, I am not sure it's appropriate to restrict the filing of lawsuits, at least at this stage. Does not mean it will pass Rule Eleven muster, but there's been no Rule Eleven request. So I don't have that before me. However, I don't think it's appropriate to restrict Mr. Sibley from filing lawsuits, at least at this stage. Mr. Sibley, Montgomery Blair Sibley, has filed a number of lawsuits but they've been different kinds of lawsuits. I have had two cases where personally he sued his former wife, trying to get this Court involved in the domestic relations

dispute. I declined to get involved in that. This would be the second lawsuit that I was involved with against Judge Lando. And I think both the younger -- I felt it was inappropriate to get involved in that case. This is another case. Actually it's a different plaintiff. While I sympathize with the defendant in a sense, it's not fun to be sued in these matters, probably don't have much of a basis to begin with and very little likelihood of prevailing on it, I am not sure you can keep somebody from filing lawsuits, at least at this stage. What is the requirement if you are going to challenge the constitutionality?

MS. STAPLES CURD: There's a requirement that you file a notice with the Court. It's actually -- there's a local rule in the Southern District of Florida that requires you comply with the Florida statute, which I can't remember the statute right offhand. It's in the first volume of the statutes. It requires you file a notice. You actually have to file a formal notice on the Attorney General in Tallahassee. I am not sure Judge Lando is the proper party.

THE COURT: She would not be the proper party. All right. Seems to me the Rooker Feldman doctrine does apply here. I am inclined to dismiss this case, Mr. Sibley, and I guess you can keep filing lawsuits if you want. I am not sure you are doing yourself or your son any good in doing that. I don't know what is going on in the State Court proceedings but it seems that is where the battle should be fought. I think you are picking the wrong place for battle. You have a Trial Court, you have an Appellate Court, you have a Supreme Court to appeal to just as does any other litigant. I don't this is appropriate litigation. Unless you can tell me there is something not in your brief that you wish to add.

MR. BLAIR SIBLEY: I appreciate the opportunity but I have not put -- there's nothing in my brief I can add to. If it's not in

my brief I have nothing more to add.

THE COURT: All right. I am going to deny the motion for order restricting future filing because there's no Rule Eleven motion. Unless somebody has something to add to the briefs I'll go ahead and consider it on the briefs then. If there's nothing else, I appreciate you all coming in today. Thank you.

MATTER CONCLUDED

CERTIFICATE

I hereby certify that the foregoing is an accurate transcription of proceedings in the above-entitled matter.

PATRICIA SANDERS, RPR

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 03-21885-CN-HUCK/TURNOFF

ALEXANDER BLAIR SIBLEY, a minor,
by and through MONTGOMERY BLAIR SIBLEY,
his Father,

Plaintiff,

vs.

MAXINE COHEN LANDO, in her capacity as a
Judge of the Circuit Court of the 11th Judicial
Circuit in and for Miami-Dade County, Florida,

Defendant.
_____/

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS AND DENYING DEFENDANT'S MOTION FOR ORDER RESTRICTING FUTURE FILINGS AGAINST JUDGE LANDO

THIS MATTER is before the Court on August 27, 2003 for oral argument on the Motion to Dismiss and Motion for Order Restricting Future Filings of Defendant, Maxine Cohen Lando, in her capacity as a Judge of the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida ("Judge Lando"). The Court has reviewed the Complaint, the Motion, the parties' respective legal memoranda and oral argument and is fully advised in the premises. For the reasons discussed below, the Motion to Dismiss is GRANTED.

Background

Plaintiff, Alexander Blair Sibley, is the son of Montgomery Blair Sibley ("Father"), an attorney certified to practice in Florida. Plaintiff alleges that Judge Lando, who presides over the Father's divorce case, has, by one of her orders in that proceeding, violated his constitutional right of equal protection under the law and due process. The Plaintiff's divorce case, Sibley v. Sibley, case number 1994-18177-FC-04, in the Circuit Court in and for Miami-Dade County, Florida, has been ongoing since 1994. The case has apparently been acrimonious, as evidenced by the Father's numerous filings of separate actions related to issues in the divorce proceeding, including:

1. *Sibley v. Judge Maxine Cohen Lando*
   United States District Court, Southern District of Florida Case
   No. 01-2940-CIV-UNGARO-BENAGES
   Summary: allegations of constitutional violations by presiding state judge
   Outcome: dismissed on basis of *Younger* abstention.

2. *Sibley v. Judges David Gersten, Juan Ramirez, and Joseph Nesbitt*
   United States District Court, Southern District of Florida
   Case No, 00-3665-CIV-MORENO
   Summary: allegations of constitutional violations by judges
   Outcome: dismissed on basis of judicial immunity, lack of subject-matter jurisdiction.

3. *Sibley v. Mark Martinez*

United States District Court, Southern District of Florida
Case No. 02-22931-CIV-HIGHSMITH
Summary: allegations of constitutional violations by Clerk's filing process
Outcome: Pending.

4. *Sibley v. Judges Alan Schwartz, David Gersten, Mario Goderich, Gerald Cope, Robert Shevin, Maxine Cohen Lando, Victoria Platter, and Barbara Sibley*
United States District Court, Southern District of Florida
Case No. 01-3746-CIV-KING
Summary: allegations of constitutional violations by judges
Outcome: dismissed on basis of *Younger* abstention, lack of subject matter jurisdiction. Rule I I Sanctions were imposed against Plaintiff.

5. *Sibley v. Sibley*
United States District Court, Southern District of Florida
Case No. 01-1349-CIV-GOLD
Summary: removal of divorce action from Judge Lando's court
Outcome: remanded on basis of lack of subject matter jurisdiction.

6. *Sibley v. Florida Supreme Court, Harry LeeAnstead, Third District Court ofAppeal, and Eleventh Judicial Circuit Court of Dade County*
United States District Court, Southern District of Florida

Case No. 03-21199-CIV-LENARD
Summary: allegations of equal protection violations in decisions rendered by Florida courts.
Outcome: dismissed sua sponte for lack of subject-matter jurisdiction.

7. *Sibley v. Maxine Cohen Lando*
United States District Court, Southern District of Florida
Case No. 03-21728-CIV-JORDAN
Summary: allegations of false imprisonment due to Writ of Bodily Attachment entered by Judge Lando in divorce proceedings.
Outcome: Motion to Dismiss pending.

The Father has also filed a lawsuit against his wife in federal court in Delaware, which was dismissed for lack of jurisdiction (Case No. 8:00-CV-02997-JFM), and has filed a number of appeals and/or petitions in Florida state courts. Indeed, the Plaintiffs Father is no stranger to this Court. See *Sibley v. Sibley*, Case No. 01-2770-CIV-HIJCK and *Sibley v. Lando*, Case No. 0320942-CIV-HUCK. In those cases, the Father alleged, respectively, that his former wife interfered with his parent-child relationship, and that Judge Lando violated his constitutional rights by her orders in the divorce case. The Court dismissed those cases, respectively, because of the lack of subject matter jurisdiction and because of the *Rooker -Feldman* and the *Younger* abstention doctrines.

The Complaint in this case attacks a recent court order entered by Judge Lando in the divorce proceedings and seeks a declaratory judgment, declaring that Judge Lando's child support orders violate Plaintiffs United States Constitution rights and Florida Constitution rights.

Judge Lando seeks dismissal of the Complaint on several grounds;

a) Judge Lando has judicial immunity from the instant action because she was acting in her judicial capacity when she issued the order in question;

b) the court lacks jurisdiction under the *Rooker-Feldman* doctrine because granting the Plaintiff's requested relief would nullify a decision rendered in an ongoing state court proceeding;

c) the court should abstain from determining this matter under the *Younger* abstention doctrine.

1. Motion to Dismiss
Standard on Motion to Dismiss

To warrant dismissal of a complaint under Rule 12(b)(6) of the Federal Rules of Civil Procedure, it must be "clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." *Blackston v. Alabama*, 30 F.3d 117, 120 (11' Cir. 1994) (quoting *Hishon v. King & Spaulding*, 467 U.S. 69, 73 (1984)). Determining the propriety of granting a motion to dismiss requires a court to accept all the factual allegations in the complaint as true and to evaluate all inferences derived from those facts in the light most favorable to the plaintiff', *See Hummings v. Texaco, Inc.*, 29 F.3d 1480, 1483 (11"' Cir. 1994). The threshold of sufficiency that a complaint must meet to survive a motion to dismiss is exceedingly low. See *Ancata v. Prison Health Sys., Inc.*, 769 F.2d 700, 703 (11" Cir. 1985) (citations omitted); *Jackam v. Hosp. Corp. of America Mideast. Ltd.*, 800 F.2d 1577, 1579 (11" Or. 1983). "[Ulnless it appears beyond doubt that the plaintiff can prove no set of facts in

support of his claim which would entitle him to relief," the complaint should not be dismissed on grounds that it fails to state a claim upon which relief can be granted. *Sea Ycssel, Inc, v. Reves*, 23 F.3d 345, 347 (11th Cir. 1994) (citations omitted). Nevertheless, to survive a motion to dismiss, plaintiff must do more than merely "label" his claims. *Blumel v. MS,Iander*, 919 F.Supp. 423, 425 (M.D.Fla. 1996). Moreover, when on the basis of a dispositive issue of law no construction of the factual allegations will support the cause of action, dismissal of the complaint is appropriate. *Marshall County Bd. of Educ. v. Marshall County Gas Dist.*, 992 F.2d 1171, 1174 (11 ` Cir. 1993).

Analysis

1. *Rooker-Feldman* Doctrine Bars Plaintiffs Suit

It is well-settled that federal district courts do not have jurisdiction to review decisions of state courts. See *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 482-86 (1983); *Staley v. Ledbetter*, 837 F.2d 1016, 1017-18 (11" Cir. 1988); *Wood v. Orange County*, 715 F, 2d 1543, 1546 (11th Cir. 1983). This rule, commonly referred to as the *Rooker-Feldman* doctrine, provides that:

> [l]ower federal courts possess no power whatsoever to sit in direct review of state court decisions. If the constitutional claims presented to a United States district court are inextricably intertwined with the state court's [ruling] in a judicial proceeding . . . then the district court is in essence being called on to review the state-court decision. This the district court may not do.

Feldman, 460 U.S. at 482 n.16. Such a review rests solely in the United States Supreme Court, *Id.; Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923). The *Rooker-Feldman* doctrine ensures that the district courts do not "trench on the exclusive authority of the Supreme Court [of the United States] to review state court decisions for errors of federal law." *Wood*, 715 F.2d at 1547. Where the federal claim asserted is "inextricably intertwined" with a judicial decision of the state court, the plaintiffs remedy lies in a direct appeal to the Supreme Court, not with the district court. ht at 1546 (citations omitted). "[The Rooker[-Feldman] bar also operates where the plaintiff fails to raise his federal claims in state court." *Id.*

Here, the complaint alleges that Judge Lando's orders violated Plaintiffs federal constitutional rights. As such, Plaintiffs asserted federal claim is "inextricably intertwined" with the judicial decision of the state court, and cannot be adjudicated by this Court.

2. Younger Doctrine Justifies Abstention

Defendant also argues that this Court should abstain from deciding Plaintiff's claims for declaratory relief under the doctrine of *Younger v. Harris*, 401 U. S. 37 (1971), and its progeny. The *Younger* abstention doctrine provides that federal courts should, based on interests of comity and federalism, abstain from assuming jurisdiction whenever federal claims have been or could be presented in ongoing state judicial proceedings that concern important state interests. *Hawaii Housing Auth. v. Midkiff*, 467 U.S. 229, 237 (1984). Although *Younger* was a state criminal proceeding, its principles are fully applicable to civil cases when important state interests are involved. *31 Foster Children v. Bush*, 329 F.3D 1255 (11th Cir. 2003). The *Younger* abstention doctrine

embodies "a strong federal policy against federal-court interference with pending state judicial proceedings, absent extraordinary circumstances." *Beltran v. California*, 871 F.2d 777, 781 (9" Cir. 1988), *Middlesex County Ethics Committee v. Garden State BarAss'n*, 457 U.S. 423, 431 (1982). Where, as here, assumption of jurisdiction by a federal court would interfere with pending state proceedings, whether criminal or civil, abstention under *Younger* is generally appropriate. *Word of Faith Outreach Or. Church. Inc., v. Morales*, 986 F. 2d 962 (5'h Cir. 1993). The fact that Plaintiff's action is filed pursuant to 42 U.S.C. § 1983 is no bar to *Younger* abstention. *Trainor v. Hernandez*, 431 U.S. 434, 450 (1977). The *Younger* doctrine represents an independent barrier even to § 1983 suits that seek injunctive relief. *In re Fussell*, 928 F.2d 712, 715 (5" Cir. 1991).

The Supreme Court has established a three prong test for application of the *Younger* abstention doctrine: (1) the state proceedings are ongoing; (2) the proceedings implicate an important state interest; and (3) the state proceedings provide an adequate opportunity to raise federal questions. *Middlesex*, 457 U.S. at 423. Each of the three prongs is clearly present here. The State of Florida has an important interest in guaranteeing the ability of its courts to protect the rights of its citizens who invoke the state court process, including domestic relations and child support matters. All that is required under the *Younger* abstention doctrine is "the opportunity to present their federal claims in the state proceedings." *Juidice v. Vail*, 430 U.S. 327, 337 (1977); *Fresh Intern. Corp. v. Agricultural Labor Relations Bd.*, 805 F.2d 1353, 1362 (9th Cir. 1986). Florida circuit courts have the power in all circumstances to consider constitutional issues and even to decide § 1983 claims. *Key Haven Associated Enters, Inc. v. Board of Trustees of the Internal Imp. Trust Fund*, 427 So.2d 153 (Fla. 1982); *Lloyd v. Page*, 474 So.2d 865 (Fla. 1st

DCA 1985). It is appropriate for the federal courts to indulge the presumption that state courts are willing and able to vindicate federal constitutional rights. *Cinema Blue of Charlotte, Inc. v. Gilchrist*, 887 F.2d 49, 54 (4th Cir. 1989).

The state court, which has heard, and can continue to resolve, the issues Plaintiff attempts to raise in this lawsuit, is the proper forum for Plaintiffs complaints. Because Plaintiff, through his Father, has an opportunity to fully participate in the Father's state court proceedings and to seek all appropriate remedies, legal and equitable, it is appropriate for this Court to abstain from hearing this case.

2. Motion For Order Restricting Future Filings

Because of the numerous and unsuccessful (frivolous, according to the Defendant,) cases which Plaintiff's Father has filed challenging Defendant's rulings in the domestic relations proceedings, Defendant asks that the Court place restrictions on the Father with regard to filing any new cases against Defendant. While the Court sympathizes with the Defendant, and generally concurs with her that the Father's previous federal cases were, at least, borderline-frivolous, for the reasons discussed at oral argument of the Motion for Order Restricting Future Filings Against Judge Lando, this Court determines that the requested relief is not appropriate at this time. However, if Judge Lando believes she has a basis for seeking sanctions pursuant to Rule 11 of the Federal Rules of Civil Procedure, she may file an appropriate motion within 15 days of this Order. Of course, Defendant has the protection provided by Rule 11 with respect to any new federal cases the Father may file in the future.

Conclusion

The Court concludes, under both the *Rooker-Feldman* and the *Younger* abstention doctrines, that it would be inappropriate to exercise any subject matter jurisdiction that it may have over Plaintiff's federal claims asserted in this case.[1] Accordingly, the Motion to Dismiss is GRANTED. The Motion for Order Restricting Future Filings Against Judge Lando is DENIED. All other pending motions are DENIED as moot and this matter is CLOSED.

DONE AND ORDERED in Chambers, Miami, Florida this 3rd of September, 2003.

Paul C. Huck
United States District Judge

Copy furnished to:
Montgomery Blair Sibley, Esq.
Stephanie S. Curd, Esq.

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[1] Because the Court has determined that this case should be dismissed under both the *Rooker-Feldman* and the *Younger* abstention doctrines, the Court need not, and therefore does not, discuss the other arguments supporting the Motion.

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR DADE
COUNTY, FLORIDA
FAMILY DIVISION

IN RE: The Marriage of

CASE NO.: 94-18177 FC 19

Barbara Sibley,

Petitioner,

and

Montgomery Blair Sibley,

Respondent.
_____/

ORDER DENYING MOTION TO INTERVENE BY ALEXANDER BLAIR SIBLEY

THIS CAUSE came on before the Court on December 15, 2003 upon the Motion to Intervene filed by Alexander Blair Sibley upon the motion of his attorney/father Montgomery Blair Sibley, the Respondent/Fortner Husband in this cause, and the Court having heard argument of counsel and being otherwise fully advised in the premises, it is ORDERED and ADJUDGED as follows:

1. Montgomery Blair Sibley has an inherent conflict in representing Alexander Blair Sibley with regard to the Motion to Intervene.

2. This motion has been previously made in another form by Montgomery Blair Sibley, Respondent/Former Husband when he argued that Alexander

Blair Sibley was being denied equal protection of the law by the rulings of this Court with regard to child support due and owing to the three (3) children of Respondent/Former Husband's marriage to Petitioner/Former Wife. Respondent/Former Husband's issue was rejected by this Court's predecessor, which ruling was affirmed on appeal.

3. The Motion to Intervene on behalf of Alexander Blair Sibley be and the same is hereby DENIED.

DONE and ORDERED in Chambers, at Miami, Miami-Dade County, Florida, this day January 5, 2004.

Thomas S. Wilson, Jr.
Circuit Court Judge

Circuit Court Judge

cc: Jay M. Levy, Esquire
Montgomery Blair Sibley, pro se
Bette E. Quiat, Esquire

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 03-14915
Non-Argument Calendar

D.C. Docket No. 03-21885-CV-PC

MONTGOMERY BLAIR SIBLEY,
a father representing a minor,
Alexander Blair Sibley,

Plaintiff-Appellant,

versus

MAXINE COHEN LANDO, in her
capacity as a Judge of the Circuit
Court of the 11`" Judicial District in
and for Miami-Dade County, Florida,

Defendant-Appellee.
_____/

Appeal from the United States District Court for
the Southern District of Florida
(February 20, 2004)

Before TJOFLAT, ANDERSON and WILSON, Circuit Judges.

PER CURIAM:

Montgomery Blair Sibley ("Plaintiff"), on behalf of his

son Alexander Sibley ("Sibley"), filed a civil suit against the Hon. Maxine Cohen Lando, Judge of the Circuit Court of the 11 Judicial Circuit in and for Miami-Dade County, Florida ("Defendant"). Plaintiff argued that Defendant's child support orders against him, and her application of Fla. Stat. § 61.30(12),[2] violated his rights under the Fifth Amendment's due process clause, the Fourteenth Amendment's equal protection clause, provisions of the Florida Constitution, and Florida laws. In particular, Plaintiff argued that Defendant's orders illegally required him to pay more than his annual income in child support to the children of his previous marriage, which left him without funds to support Sibley, the offspring of his second marriage. During a hearing on Defendant's motion to dismiss the complaint, Plaintiff requested permission to amend his complaint in order to more specifically allege an overall constitutional challenge against Fla. Stat. § 61.30(12).

In a comprehensive order entered September 23, 2003, Record, Vol. 1 at 9, the district court concluded that, "under both the *Rooker-Feldman* and *Younger* abstention doctrines ... it would be inappropriate to exercise any subject matter jurisdiction that it may have over Plaintiff's federal claims

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[2] Section 61.30(12) of the Florida Statutes provides that a court may consider the existence of other children who were born after a child support obligation arose when determining whether to grant an upward modification of a child support award. Fla. Stat. § 61.30(12)(a). However, the existence of subsequent children "may only be raised in a proceeding for an upward modification of an existing award and may not be applied to justify a decrease in an existing award." Id. at § 61.30(12)(c).

asserted in this case." The court therefore granted Defendant's motion to dismiss and denied Plaintiff leave to amend. Plaintiff now appeals.

We conclude that the *Younger* doctrine required the district court to abstain for the reasons the court expressed in its September 23 order. Plaintiff contends that the court abused its discretion in denying him leave to amend his complaint. We find no abuse of discretion; an amendment would be futile.

AFFIRMED.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 03-14915

MONTGOMERY BLAIR SIBLEY,
a father representing a minor,
Alexander Blair Sibley,

Plaintiff-Appellant,

versus

MAXINE COHEN LANDO, in her
capacity as a Judge of the Circuit
Court of the 11`" Judicial District in
and for Miami-Dade County, Florida,

Defendant-Appellee.
_____/

Appeal from the United States District Court for
the Southern District of Florida
(March 31, 2004)

Appellant's motion to publish this Court's opinion is DENIED.

Appellant's request that this Court declare Eleventh Circuit Rule 36-02 unconstitutional is DENIED.

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES AND REGULATIONS INVOLVED

U.S. Constitution, Fourteenth Amendment, Section 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Constitution, Fourteenth Amendment, Section 5:

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

28 U.S.C. §1653:

Defective allegations of jurisdiction may be amended, upon terms, in the trial or appellate courts.

28 U.S.C §2072(b):

Such rules shall not abridge, enlarge or modify any substantive right. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

42 U.S.C. §1983:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Federal Rules of Civil Procedure, Rule 15(a):

Amendments - A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

Eleventh Circuit Rule 36-2:

An opinion shall be unpublished unless a majority of the panel decides to publish it. Unpublished opinions are not considered binding precedent. They may be cited as persuasive authority, provided that a copy of the unpublished opinion is attached to or incorporated within the brief, petition, motion or response in which such a citation is made.

Florida Statute §61.30(12)(c):

The issue of subsequent children under paragraph (a) or paragraph (b) may only be raised in a proceeding for an upward modification of an existing award and may not be applied to justify a decrease in an existing award.